



House of Representatives

General Assembly

February Session, 2000

File No. 173

House Bill No. 5857

House of Representatives, March 22, 2000

The Committee on Insurance and Real Estate reported through REP. AMANN of the 118th Dist., Chairperson of the Committee on the part of the House, that the bill ought to pass.

An Act Concerning Commercial Real Estate Transactions And Brokers' Liens.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 20-311 of the general statutes, as amended by
2 section 1 of public act 99-229, is amended by adding subdivision (9) as
3 follows:

4 (NEW) (9) "Commercial real estate transaction" means any
5 transaction involving the sale, exchange, lease or sublease of real
6 property other than real property containing any building or structure
7 occupied or intended to be occupied by no more than eight families or
8 a single building lot to be used for family or household purposes.

9 Sec. 2. Section 20-325a of the general statutes is repealed and the
10 following is substituted in lieu thereof:

11 (a) No person who is not licensed under the provisions of this
12 chapter, and who was not so licensed at the time [he] the person

13 performed the acts or rendered the services for which recovery is
14 sought, shall commence or bring any action in any court of this state,
15 after October 1, 1971, to recover any commission, compensation or
16 other payment [in respect of] with respect to any act done or service
17 rendered by [him] the person, the doing or rendering of which is
18 prohibited under the provisions of this chapter except by persons duly
19 licensed under this chapter.

20 (b) No person, licensed under the provisions of this chapter, shall
21 commence or bring any action [in respect of] with respect to any acts
22 done or services rendered after October 1, 1995, as set forth in
23 subsection (a), unless the acts or services were rendered pursuant to a
24 contract or authorization from the person for whom the acts were done
25 or services rendered. To satisfy the requirements of this subsection any
26 contract or authorization shall: (1) Be in writing, (2) contain the names
27 and addresses of the real estate broker performing the services and the
28 name of the person or persons for whom the acts were done or services
29 rendered, (3) show the date on which such contract was entered into or
30 such authorization given, (4) contain the conditions of such contract or
31 authorization, (5) be signed by the real estate broker or the real estate
32 broker's authorized agent, (6) if such contract or authorization pertains
33 to any real property, include the following statement: "THE REAL
34 ESTATE BROKER MAY BE ENTITLED TO CERTAIN LIEN RIGHTS
35 PURSUANT TO SUBSECTION (d) OF SECTION 20-325a OF THE
36 CONNECTICUT GENERAL STATUTES", and (7) be signed by the
37 person or persons for whom the acts were done or services rendered or
38 by an agent authorized to act on behalf of such person or persons,
39 pursuant to a written document executed in the manner provided for
40 conveyances in section 47-5, except, if the acts to be done or services
41 rendered involve a listing contract for the sale of land containing any
42 building or structure occupied or intended to be occupied by no more
43 than four families, be signed by the owner of the real estate or by an
44 agent authorized to act on behalf of such owner pursuant to a written
45 document executed in the manner provided for conveyances in section

46 47-5.

47 (c) Notwithstanding the provisions of subsection (b) of this section,
48 no person licensed under the provisions of this chapter, shall
49 commence or bring any action with respect to any acts done or services
50 rendered after October 1, 2000, in a commercial real estate transaction,
51 unless the acts or services were rendered pursuant to (1) a contract or
52 authorization meeting the requirements of subsection (b) of this
53 section, or (2) a memorandum, letter or other writing stating for whom
54 the licensee will act or has acted, signed by the party for whom the
55 licensee will act or has acted in the commercial real estate transaction,
56 the duration of the authorization and the amount of any compensation
57 payable to the licensee.

58 [(c)] (d) Nothing in subsection (a) of this section, [or] subdivisions
59 (2) to (6), inclusive, of subsection (b) of this section or subsection (c) of
60 this section shall prevent any licensee from recovering any
61 commission, compensation or other payment [in] with respect to any
62 acts done or services rendered, if [such person] it would be inequitable
63 to deny such recovery and the licensee (1) has substantially complied
64 with subdivisions (2) to (6), inclusive, of subsection (b) of this section
65 [and it would be inequitable to deny such recovery] or (2) with respect
66 to a commercial real estate transaction, has substantially complied with
67 subdivisions (2) to (6), inclusive, of subsection (b) of this section or
68 subdivision (2) of subsection (c) of this section.

69 [(d)] (e) A licensed real estate broker who has performed acts or
70 rendered services relating to real property upon terms provided for in
71 a written contract or agreement between such broker and the owner,
72 buyer or tenant for whom such acts were done or services rendered
73 shall have a lien upon such real property. Such lien shall be in the
74 amount of the compensation agreed upon by and between the broker
75 and the owner, buyer or tenant for whom such acts were done or
76 services rendered.

77 [(e)] (f) Except as provided in subsections [(f), (g) and (h)] (g), (h)
78 and (i), the lien provided for in this section shall not attach until the
79 broker is entitled to compensation, without any contingencies, other
80 than closing or transfer of title, under the terms set forth in the written
81 listing or buyer or tenant representation contract and the broker has
82 recorded the claim for lien prior to the actual conveyance or lease of
83 such real property except as may be otherwise provided with the town
84 clerk of the town where such property is located.

85 [(f)] (g) Except as provided in subsection [(g)] (h), when a broker is
86 entitled to compensation from the owner of real property in
87 instalments, a portion of which is due only after the conveyance or
88 lease of the real property, or in the case of a commercial real estate
89 transaction when a broker, pursuant to a written agreement, is or may
90 become entitled to compensation in instalments or for the renewal of
91 the lease, extension of the lease or a new lease with the same tenant
92 only after the conveyance or lease of the real property, any claim for
93 lien for those payments due after the conveyance or lease may be
94 recorded at any time [subsequent to the conveyance or lease of the real
95 property and] prior to the date on which the payment is due but shall
96 only be effective as a claim for lien against the real property to the
97 extent moneys are [still] owed or will be owed to the transferor by the
98 transferee. [A single claim for lien recorded prior to conveyance or
99 lease of the real property claiming all moneys due under an instalment
100 payment agreement shall not be valid or enforceable as it pertains to
101 payments due after the conveyance or lease.] The lien shall attach as of
102 the recording of the claim for lien.

103 [(g)] (h) In the case of a lease for real property the claim for lien
104 must be recorded within thirty days after the tenant takes possession
105 of the leased premises unless written notice of the intended signing of
106 the lease is delivered to the broker entitled to claim a lien by registered
107 or certified mail, return receipt requested, or by personal service, at
108 least ten days prior to the date of the intended signing of the lease for

109 the real property in which case the claim for lien must be recorded
110 before the date indicated for the signing of the lease in the notice
111 delivered to the broker. The lien shall attach as of the recording of the
112 claim for lien.

113 ~~[(h)]~~ (i) If a broker's written contract for payment is with a
114 prospective buyer, then the lien shall attach only after the prospective
115 buyer accepts the conveyance or lease of the real property and the
116 claim for lien is recorded by the broker with the town clerk of the town
117 in which such property is located. Any claim for lien shall be filed by
118 the broker no later than thirty days after the conveyance or the tenant
119 takes possession of the real property.

120 ~~[(i)]~~ (j) The broker shall serve a copy of the claim for lien on the
121 owner of the real property. Service shall be made by mailing a copy of
122 the claim for lien by registered or certified mail, return receipt
123 requested, or by personal service upon the owner by any indifferent
124 person, sheriff or other proper officer, by leaving with such owner or
125 at the owner's usual place of abode a true and attested copy thereof. A
126 copy of the claim for lien may be served at the same time as the notice
127 required by subsection ~~[(q)]~~ (r) of this section. The broker's lien shall be
128 void and unenforceable if recording does not occur within the time
129 period and in the manner required by this section.

130 ~~[(j)]~~ (k) A broker may bring suit to enforce a claim for lien in the
131 superior court in the judicial district where the real property is located
132 by filing a complaint and sworn affidavit that the claim for lien has
133 been recorded in accordance with this section. The person claiming a
134 lien shall, unless the claim is based upon an option to purchase the real
135 property or the lien is filed pursuant to subsection (g) of this section,
136 within one year, if required by this subsection, after recording the
137 claim for lien, commence foreclosure by filing a complaint. Failure to
138 commence foreclosure within one year after recording the lien shall
139 extinguish the lien. No subsequent claim for lien may be given for the

140 same claim nor may that claim be asserted in any proceedings under
141 this section. A person claiming a lien based upon an option to
142 purchase shall, within six months after the conveyance or lease of the
143 real property under the exercise of the option to purchase, commence
144 foreclosure by filing a complaint and a sworn affidavit that the claim
145 for lien has been recorded in accordance with this section. Failure to
146 commence foreclosure within this time shall extinguish that claim for
147 lien. No subsequent claim for lien may be given for the same claim nor
148 may that claim be asserted in any proceedings under this section. The
149 plaintiff shall issue summons and provide service as in actions to
150 foreclose a mortgage. When any defendant resides out of the state or is
151 temporarily located out of the state, or on inquiry cannot be found, or
152 is concealed within this state so that process cannot be served on that
153 defendant, the plaintiff shall cause a notice to be given to that
154 defendant, or cause a copy of the complaint to be served upon that
155 defendant, in the manner and upon the same conditions as in actions
156 to foreclose a mortgage. Except as otherwise provided in this section,
157 all liens claimed under this section shall be foreclosed in the manner in
158 which mortgage foreclosures are conducted.

159 ~~[(k)]~~ [(l)] The claim for lien shall state the name of the claimant, the
160 name of the owner, a description of the real property upon which the
161 lien is being claimed, the amount for which the lien is claimed, and the
162 real estate license number of the broker. The claim for lien shall contain
163 a sworn statement by the signatory that the information contained in
164 the notice is true and accurate to the knowledge of the signatory. The
165 claim for lien shall be signed by the broker.

166 ~~[(l)]~~ [(m)] Whenever a claim for lien has been recorded with the town
167 clerk and a condition occurs that would preclude the broker from
168 receiving compensation under the terms of the broker's written
169 contract or agreement, the broker shall provide within thirty days of
170 demand to the owner of record a written release or satisfaction of the
171 lien.

172 ~~[(m)]~~ (n) Upon written demand of the owner or the owner's
173 authorized agent, served on the broker claiming the lien requiring suit
174 to be commenced to enforce the lien, a suit shall be commenced within
175 forty-five days thereafter, or the claim for lien shall be extinguished.
176 Service of any such written demand shall be by registered or certified
177 mail, return receipt requested, or by personal service upon the broker
178 by any indifferent person, sheriff or other proper officer, by leaving
179 with such broker or at the broker's usual place of abode a true and
180 attested copy thereof.

181 ~~[(n)]~~ (o) Whenever a claim for lien has been recorded with the town
182 clerk and is paid, or where there is failure to foreclose to enforce the
183 lien within the time provided by this section, the broker shall
184 acknowledge satisfaction or release the claim for lien, in writing, on
185 written demand of the owner within thirty days after payment or
186 expiration of the time in which to commence foreclosure on the lien.

187 ~~[(o)]~~ (p) Except as otherwise provided in this section, whenever a
188 claim for lien has been recorded with the town clerk, that would
189 prevent the closing of a conveyance or lease, an escrow account shall
190 be established from the proceeds of the conveyance or lease in the
191 amount of the compensation agreed upon by the parties. Upon the
192 establishment of the escrow account the broker shall immediately
193 release the claim for lien. The establishment of an escrow account, as
194 provided for in this section, shall not be the sole cause for the owner to
195 refuse to complete the conveyance or lease. These moneys shall be held
196 in escrow by the attorney for the lessor in the case of a lease for real
197 property and by the attorney for the owner in the case of the actual
198 conveyance or lease of such real property until the parties' rights to the
199 escrowed moneys have been determined by the written contract or
200 agreement of the parties, a determination by the Superior Court, or
201 some other process which may be agreed to by the parties. When there
202 are sufficient funds in the amount of the claimed lien, there shall be a
203 release of the claim for lien which would allow completion of the

204 conveyance or lease on such terms as are acceptable to the parties
205 involved in the conveyance or lease. If the proceeds from the
206 conveyance or lease are insufficient to release all liens claimed against
207 the real property, including the broker's claim for lien, then the parties
208 are not required to establish the escrow account under this section.

209 ~~[(p)]~~ (q) The provisions of subsections (a) and (b) of this section shall
210 not apply to any person excepted from the provisions of this chapter
211 by section 20-329 with respect to any acts performed by ~~[him]~~ the
212 person which are included in such exception; or to any real estate
213 broker or real estate salesperson who has provided services to the
214 federal government, any political subdivision thereof, or any
215 corporation, institution or quasi-governmental agency chartered by the
216 federal government.

217 ~~[(q)]~~ (r) No broker is entitled to claim any lien under this section,
218 unless, after the broker is entitled to compensation, without
219 contingencies, other than closing or transfer of title, under the terms set
220 forth in the written contract and not later than three days prior to the
221 later of the date of the conveyance or lease as set forth in the real estate
222 sales contract or lease or the actual date of the conveyance or the date
223 when the tenant takes possession, the broker gives written notice of the
224 claim for lien to the owner of the real property and to the prospective
225 buyer or tenant that ~~[he]~~ the broker is entitled to compensation under
226 the terms set forth in the written contract and intends to claim a lien on
227 the real property. The notice shall be served upon the owner and the
228 prospective buyer or tenant, by any indifferent person, sheriff or other
229 proper officer, by leaving with such owner and prospective buyer or at
230 their usual place of abode a true and attested copy thereof. When there
231 are two or more owners, or two or more buyers, the notice shall be
232 served on each owner and on each buyer.

INS Committee Vote: Yea 17 Nay 0 JF

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact: None

Affected Agencies: Department of Consumer Protection

Municipal Impact: None

OLR Bill Analysis

HB 5857

**AN ACT CONCERNING COMMERCIAL REAL ESTATE
TRANSACTIONS AND BROKERS' LIENS.****SUMMARY:**

This bill (1) sets conditions under which real estate licensees may bring a lawsuit to recover commissions, compensation, or other payments for services rendered with respect to commercial transactions; (2) adds a slightly modified procedure for licensees to bring a lawsuit to recover commissions, compensation, or other payments in commercial transactions; and (3) modifies the three day advance notice of lien real estate brokers must give an owner and prospective buyer or tenant.

The bill specifies that if the licensee substantially complies with either current law's procedures or the bill's modified procedure in seeking to recover commissions, compensation, or other payments for services rendered, there should be no statutory barrier to recovery if it would be inequitable to deny it.

It defines a "commercial real estate transaction" as one involving the sale, lease, sublease, or exchange of real property other than a building or structure occupied or intended to be occupied by eight or fewer families or a single building used for family or household purposes.

EFFECTIVE DATE: October 1, 2000

**REQUIREMENTS FOR COMMERCING A LAWSUIT FOR
COMMISSIONS**

Beginning October 1, 2000, the bill prohibits licensees in commercial real estate transactions from seeking to recover commissions through litigation unless they perform their services under either (1) a contract or authorization or (2) a memorandum, letter or other writing. The contract or authorization must (1) be in writing, (2) include the names

and addresses of the broker performing the service and the person for whom the services are performed, (3) show the date the contract was entered into or the authorization given, (4) include any contract or authorization condition, (5) be signed by the broker or his authorized agent, and (6) include the following statement if it involved real property: "THE REAL ESTATE BROKER MAY BE ENTITLED TO CERTAIN LIEN RIGHTS PURSUANT TO SUBSECTION (d) OF SECTION 20-325 OF THE CONNECTICUT GENERAL STATUTES."

The memorandum, letter, or other writing must state for whom the licensee will act or has acted, be signed by the party for whom the licensee will act or has acted, state the duration of the authorization, and the amount of any compensation payable to the licensee.

ADVANCE NOTICE OF LIEN

The bill requires the broker to give written notice of his claim for a lien to the owner and (1) the prospective buyer or tenant three days before the later of either the date of conveyance as set in the sales contract or lease or (2) the actual date of conveyance or the date when the tenant takes possession.

Current law requires written notice three days before the date of the conveyance as set in the contract.

COMMITTEE ACTION

Insurance and Real Estate Committee

Joint Favorable Report

Yea 17 Nay 0